



HATE CRIMES: AN ANALYSIS IN INDIAN CONTEXT

By Nancy Goel

B.A.LL.B(H), *Amity Law School, Noida*

INTRODUCTION

A country like India, having diverse culture and traditions faces several challenges for maintaining national peace and order. In such a diverse country, there is always a possibility of a conflict among people of different cultures and traditions and if such problems are not dealt with efficiently, they could lead to a crisis. One such conflict or challenge is HATE CRIMES. Although there is no universal application of hate crimes, they may be defined as crimes which are based on pre-conceived biases about a person or a community. Also known as bias-motivated crimes.

Hate crimes refers to criminal acts towards an individual or a community as a whole because of certain differences in race, religion, class, ethnicity, colour etc. Such crimes arise majorly because of difference in religious practices and customs between the victims and the offender. Hate crimes are basically an attack on a person's rights which affects the society as a whole and not only that particular individual, thereby making it a more heinous criminal offence¹. These are targeted towards persons belonging to such groups and are mostly violent in nature. Hate crimes can assume various forms such as mob lynching, murder, hate speeches, assault, harassment etc. Such acts induce a feeling of fear and inferiority among the victims. They are affected both

psychologically and physically. Minorities are the main targets of hate crimes as they are not considered to be the part of the mainstream. In India, there has been a rise in hate crimes in recent years and most of them are committed against religious minorities such as Muslims, Christians and other backward castes.

BACKGROUND

In democratic societies like India, Rights are granted in order to protect individuals from arbitrary state practices. Freedom of Speech and Expression enshrined under Article 19 of the Universal Declaration of Human Rights is of utmost significance since it allows individual to enjoy freedom fully and attain personal fulfilment.

The Indian Constituent Assembly, keeping in mind the historical events that took place globally such as the British Rule in India and the reign of Adolph Hitler in Germany, gave utmost importance to the 'freedom of speech and expression' as a most important feature of the new democracy of India. Many debates took place on the restrictions or limitations to be put on the said freedom and whether this freedom should cover hate speech or not.

Initially, it was suggested that a proviso should be attached to the freedom of speech and expression. The proviso would read as:

- publication or oral use of obscene, defamatory, slanderous, seditious, libellous or blasphemous matter would be made punishable by law.
- Also reasonable restrictions could be imposed by law, if necessary, to protect

¹ Hate Crime, *available at: drishtiias.com* (last visited on September 15, 2022).



the public interest which shall include the protection of minority communities.

These provisions were opposed in the Assembly on the ground that such restrictions spoiled the “absolute” nature of Fundamental Rights. On this Dr BR Ambedkar argued that Fundamental Rights are not absolute and the Fundamental freedom of Speech and Expression cannot be used to publish or speak anything without responsibility, and it cannot be used to prevent punishment to those who misuse this freedom.

In a democracy, where there are varied cultures and traditions, there are various interpretations and meanings of what is known as ‘public interest’. Such disagreements are very much required for a society to be dynamic and vibrant. However permissible restrictions are required to prevent the abuse of freedoms.

In our Constitution it is acknowledged that liberty and freedom cannot be absolute and therefore provisions are made in Article 19 sub clause (2) to (6) providing powers to the State to impose restrictions on the freedom guaranteed under Article 19(1).

Through the First Constitutional Amendment, 1951 and Sixteenth Amendment, 1963 amended clause 2 of Article 19, according to which restrictions could be imposed on the freedom of speech and expression on the following grounds:

- Security, sovereignty and integrity of the State
- Friendly relations with other States
- Public Interest
- Decency and morality

In this way, restrictions to Article 19(1) enshrined in Article 19(2) were being arrived² at.

INDIAN LAWS GOVERNING HATE CRIMES

INDIAN PENAL CODE, 1860

Various provisions of the Indian Penal Code deals with Hate Crimes. It is the major legislation that covers hate crimes and provides for its punishment. The provisions regarding the same are listed below:

- SECTION 153A - If a person promotes enmity between people belonging to different groups on grounds of race, religion, place of birth, residence, language, etc. or does any act which is prejudicial to maintenance of harmony by way of words spoken or written, or by visible representations of any other kind; shall be punished with imprisonment which may extend to 3 years, or with fine or with both. However, if such offence is committed in any place of worship, the punishment extends to imprisonment up to 5 years and fine. In this case, the existence of mens rea has to be proved by the prosecution.
- SECTION 153 B - It states that whoever makes or publishes any imputations or assertions against any group of individuals due to their being members of any religion, race, community, etc. , that are prejudicial to national integration; shall be punished with imprisonment for upto 3 years or with fine or with both.
- SECTION 295 – If any person damages or defiles any place of worship or any sacred object with the intention of

² Law Commission of India, “Hate Speech” (March, 2017)



insulting any religion or knowing that such an act is likely to be considered as insult by any class of persons, he shall be punished with imprisonment for 2 years or with fine or with both.

- SECTION 295 A – Whoever with deliberate and malicious intention of outraging the religious beliefs of any class of people, insults the religious beliefs of that class, by words either spoken or written, shall be punished with imprisonment for 3 years or with fine or both.
- SECTION 298 – Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes a sound etc., shall be punished with imprisonment for 1 year or with fine or both.
- SECTION 505 –Whoever publishes or circulates any rumour or news that is likely to create feelings of enmity, hatred or ill – will between different classes or communities, shall be punished with imprisonment for 3 years or fine or with both.

REPRESENTATION OF PEOPLE'S ACT, 1951

- SECTION 8 - Under this section, if any person is convicted of using his right to freedom of speech and expression under Article 19(1) illegitimately, he is disqualified from contesting the election. This section puts a bar on a person from contesting the elections if he is found to violate his freedom of speech and expression guaranteed by the Indian Constitution.

- SECTION 123 (3A), 125 – It declares the promotion of enmity based on race, caste, religion, language etc. during elections to be unconstitutional corruption in the electoral process.

OTHER STATUTES

There are various other legislations which deal with Hate Crimes through few of their provisions such as:

- IT ACT, 2001 – SECTIONS 66A, 69, 69A
- CODE OF CRIMINAL PROCEDURE, 1973 – SECTIONS 95, 107, 144, 151, 160
- UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 – SECTIONS 2(f), 10, 11, 12
- PROTECTION OF CIVIL RIGHTS ACT, 1955 – SECTION 7
- RELIGIOUS INSTITUTIONS (PREVENTION OF MISUSE) ACT, 1980 – SECTIONS 3 and 6
- THE CINEMATOGRAPHERS ACT, 1952 – SECTIONS 4, 5B, 7

LAW COMMISSION RECOMMENDATION

The 267th Report of the Law Commission states that discrimination between groups on the basis of gender, sex and sexual orientation should be guaranteed as well under the hate speech laws.

In the case of: *Pravasi Bhalai Sangathan v. Union of India*³, the Supreme Court observed that irrespective of the form, a deeper investigation must be conducted by the Law Commission into the hate speech to carefully examine the issues that are raised. And if

³ AIR 2014 SC 1591



possible they must also give a definition of hate speech and make appropriate recommendations to the Parliament to empower the Election Commission to take into account each and every hate speech, whatever be its form.

In its observation, the 267th report of the Law Commission, which was published in March in the year 2017, the Commission stated that hate speech must be treated as a separate offence specifically and it would not be subsumed in already existing sections dealing with derogatory speeches and acts. The Law Commission proposed to add two new sections in the Indian Penal Code. These are Section 153C and Section 505A.

According to the draft, Section 153C proposed that:

- Whosoever threatens the general public, either orally or by writing, by making visual representations or signs, or
- Incites violence on the basis of race, religion, residence, sex, gender, caste or place of birth; shall commit an offence which shall be punishable with imprisonment for a term of two years or fine of Rupees Five Thousand or both.

Section 505A of the draft proposed that derogatory or threatening words or writings or signs that are likely to be heard or seen by another person, thereby intending to incite or provoke violence, shall be penalised with imprisonment for a term which may extend to one year or fine which may extend to five thousand⁴ rupees or both.

⁴ What is Hate Speech and its laws in India, *available at:* writinglaw.com (last visited on September 20, 2022)

HATE CRIMES IN INDIA

During the Partition of British India, India as a nation emerged out of extreme communal violence. The incidents of hate crimes, also known as ‘communal riots’ are not new to India. An example of it is the Anti – Sikh riots of 1984, after Prime Minister Indira Gandhi’s assassination. Politics play an important role in the happening of these crimes since it determines and influences the public sentiments against certain communities. If we consider the present scenario, 84 incidents of hate crimes were reported between October 2021 and March 2022, in the States in which the 2022 assembly elections were to be held. All of these incidents were based on statements made by politicians towards a particular religious community⁵.

MOST PROMINENT FORMS OF HATE CRIMES IN INDIA:

HATE SPEECH

According to Black’s Law Dictionary, the term “Hate Crimes” means “a speech which does not have any meaning other than an expression of hatred for some group belonging to a particular race, especially when such speech is likely to invoke violence.”

In other words, a hate speech is a speech that is insulting or derogatory towards some person or community. They are of a serious concern since they can lead to conflicts in a country like India having a rich diversity in language, religion, culture, traditions, caste, etc. Hate Speech based on religion, race,

⁵ Hate Crimes in India : An Analysis *available at:* juscorpus.com (last visited on September 22, 2022)



caste, etc. is prohibited under some laws in India.

In today's society, instances of hate speeches have increased. There has been continuous misuse of freedom of speech and expression guaranteed by the Indian Constitution under Article 19 and it is used to justify acts of hate speech. This freedom can become a weapon which will lead to systematic discrimination and can eventually politically marginalize a community. There has been an increase in the cases registered under Section 153A of IPC between 2014 and 2020 by nearly 500%, which indicates that there has been a hike in the instances of hate speech.

Although there is no specific legislation dealing with hate speech in our country, but it is dealt with under some provisions of Indian Penal Code, IT Act, Unlawful Activities (Prevention) Act and the like. Despite of all these legislations, the instances of hate speech in India are on a rise and there is a need for a more effective law to address the harm caused by such speeches.

MOB LYNCHING AND VIOLENCE

The Supreme Court of India has defined 'LYNCHING' in the case of: TEHSEEN S. POONAWALA V. UNION OF INDIA, as targeted violence that is against public and private property and affects the human body. In India, these are basically those incidents where a group of people kill a person for committing an offence based on some rumour. The practice and belief of one community for another community makes that community throw off their emotions which leads to an unlawful act of mob

violence. According to a report of 2018, states like UP, Haryana, Rajasthan, Madhya Pradesh, Delhi, Gujarat and Karnataka reported most cases of mob lynching and mob violence.

However, at present, there is no specific legislation dealing with mob lynching in India, some provisions of Cr.P.C deals with it such as Section 223(a) which states that a person can be charged for an act of group attack on some other person. Similarly, since lynching include attacks that often result in murder or attempt to murder, assault, harassment, etc., some provisions of IPC such as Section 302, Section 304, Section 307, Section 323 and Section 325⁶ could be applied in these instances.

COW VIGILANTISM

Cow Vigilantism is another form of Hate Crime, that has gained prominence in recent years. It is basically the use of force by mobs in the name of cow protection. Specific groups are targeted under the name of cow protection and a form of religious extremism is displayed. Minorities are their major targets. Beef, cattle industries and leather were the main source of survival of these minorities, where Muslims used to run slaughterhouses and Dalits performed tasks like working with cow carcasses⁷.

RECENT WELL - KNOWN CASES

PC George MLA v. State of Kerala⁸

The Kerala legislator PC George made allegedly communal remarks against a specific community, for which he was arrested by the police in two separate cases.

⁶ ProBono India, "Is there a need for a special law on Hate Crimes" (May, 2020)

⁷ Hate Crimes in India : An Analysis, *available at*: juscorpus.com (last visited on September 22, 2022)

⁸ WP (C). No. 23341 of 2020



In both these cases, Section 295A of IPC was invoked along with Section 153A. Though he sought anticipatory bail, the Kerala High Court while granting him relief on May 27, held that: “no such speech or statement shall be made by the petitioner which has the tendency to result in commission of offences under Section 153A or 295A of IPC.”

Jitendra Narayan Tyagi @ Vasim Rizvi v. State of Uttarakhand⁹

A petition was filed in the Supreme Court on occasion of 2 instances of hate speech against a particular community, held in December 2021 in Haridwar and Delhi. Initially the Delhi police held that there was no incident of hate speech during the Delhi event. However, it later said that an FIR has been filed under Section 153A, 295A and Section 298 of the Indian Penal Code.

As far as the haridwar event is concerned, Jitendra Tyagi who was formerly known as Waseem Rizvi, was arrested by the Uttarakhand police for making speeches and statements against a specific faith at Dharam Sansad held in December 2021. In May 2022, the Supreme Court granted him interim relief.

Preet Singh v. The State of NCT Delhi¹⁰

On August 8 2021, Advocate and BJP member Ashwini Kumar Upadhyay organised a rally against the colonial era laws in the country under the banner : Bharat Jodo Movement. Some videos of the event showed the making of remarks and slogans against a particular community. Due to this, 4 people

were arrested including Ashwini Upadhyay under Section 153A of the IPC. The Delhi Court granted bail to Ashwini on 11 August, since he had no knowledge of such happening. The court rejected the anticipatory bail of another accused Pinky Chaudhary. He was granted bail on September 30 on parity with the bail granted to other two co- accused on September 24.

Mohammed Zubair v. State of NCT of Delhi¹¹

The co-founder of fast checking website Alt News, Mohammed Zubair was arrested by the Intelligence Fusion and Strategic Operations (IFSO) unit of Delhi Police for his tweet of 2018, under Section 153A and 295A of the IPC. The tweet for which he was arrested mentioned a questionable image with the deliberate intention to insult the God of a particular religion. His bail plea was rejected by the Delhi Court and he was sent to 14 days of Judicial custody. On appeal, he was granted bail by the Patiala Court on 15 July and it was held by the court that the true identity of the Twitter user has not been established by the Delhi Police.

In one of the recent cases on Hate Speech, AMISH DEVGAN V. UNION OF INDIA¹²,

The Supreme Court discussed international jurisprudence on the subject and observed that if the freedom of speech and expression lacks acceptable public order, it would be restricted for the common people¹³ and law-abiding citizens.

⁹ First Bail Application No. 161 of 2022

¹⁰ Bail Application No. 3240 of 2021

¹¹ Writ Petition (Criminal) No. 279 of 2022

¹² Writ Petition (Criminal) No. 160 of 2020

¹³ Hate Speech and rise in promoting enmity between groups cases: Do we need a new, specific law?, available at: barandbench.com (last visited on September 23, 2022)



RECENT INSTANCES OF HATE SPEECH

- In the Navratri season, there were crimes against Muslim-owned businesses, when Hindutva groups shut down meat shops. In the month of October 2021, threatening orders were issued or meat shops were forcibly closed down in Gurugram, Palwal, Faridabad, Saharanpur, Bulandshahr and Gautam Buddh Nagar on 11 occasions. Hindutva organisations like the Bajrang Dal and Hindu Vahini played an active role in these closures.
- In Sedhwa, Madhya Pradesh, some people raised objections on the presence of a 10 year old Muslim boy at a garba event. The Bajrang Dal caught 4 Muslim boys in Bhopal at a garba event and took them into police custody. In the Ratlam District of Madhya Pradesh, posters were put up by the VHP prohibiting non-hindus from entering the garba events in various pandals.
- A seven second video of a Muslim man was viralled as ‘thook jihad’ in Loni. In the video, the Muslim man was seen contaminating food items at a food stall with his mouth spit. After this incident, the Hindu Raksha Dal organised a ‘Hanuman Chalisa’ in that area and urged such people to stop hurting the sentiments of the Hindus.
- In January, BJP MLA Nandkishor Gujar used the communal slogan “ Na Ali, na Bahubali, keval Bajrang Bali” in his election rallies.
- Bunty Upadhyay, having connections with the police, committed three

incidents of hate crimes. Firstly, he attacked a person named Shoukat Ali with a bottle of beer. He was arrested for the same but somehow managed to get bail. Then he attacked a female resident of his locality with a rubber pipe as she had not left the locality. Thirdly, he set an auto rickshaw on fire which belonged to a man named Saleem Beg, asserting that the Hindu community¹⁴ do not want any Muslims here.

ANALYSIS OF HATE SPEECH JURISPRUDENCE IN INDIA

Though article 19(1) provides for freedom of speech and expression. There are various restrictions that can be imposed by the State on this freedom under Article 19(2) on grounds of public order, morality, security and interest of State and several other grounds. Hence, Hate Speech can be prohibited and curtailed under Article 19(2) on the grounds of incitement of offence, public order and security of the State.

In the case of, *Brij Bhushan v. State of Delhi*¹⁵, the apex court observed that public order and public safety are connected to each other and they are equivalent to the State security. This observation of the apex court later received validation through the First Constitutional Amendment in which public order was included as a ground of restriction to freedom of speech and expression under Article 19(2).

In the case of, *Ramji Lal Modi v. State of UP*¹⁶, the constitutional validity of Section 295A of IPC was upheld by the Hon’ble Supreme Court. The court opined that the

¹⁴ 89 Instances of Hate Crimes, Hate Speech Across six North Indian States in four months, *available at*: thewire.in (last visited on September 20, 2022)

¹⁵ AIR 1950 SC 129

¹⁶ AIR 1957 SC 620



said section does not take into account every act of insult or any attempt thereof to insult the religious beliefs of any individual or group of individuals. Rather it takes into its scope only those acts of insult which are done with the mala fide and deliberate intention of insulting the religious beliefs and feelings of that particular class.

In the case of, *Ramesh v. Union of India*¹⁷, a comparatively liberal decision was given by the Supreme Court as to what can be considered to be a Hate Speech. The apex court held that a movie cannot be considered to be in violation of Article 19(1)(a) just due to the reason that it depicts violence, if it is imparting a message of peace. It was said that it is not the act itself that matters but the effect of the act on public order and the potential of that act to disharmonise public order and tranquillity that justifies a restriction under Article 19(2) of the Constitution.

In the case of : *Shreya Singhal v. Union of India*¹⁸, Section 66A of the Information Technology Act was declared invalid by the court on the ground that the restriction imposed under the said section did not had any proximate relationship with the act which was restricted under the same. On the ground of lack of reasonable nexus between the restriction and the act, the section was declared invalid.

In the case of, *State of Maharashtra v. Sangharaj Damodar Rupawate*¹⁹, the court laid down the standards which must be used to decide whether a particular speech or words are legitimate under Article 19(1)(a) of the Constitution or not. It was observed by the court that the effect of the offending

words must be judged from the point of view of strong-minded, reasonable, courageous and firm men and not from the point of view of weak and biased minds who sense danger in every act.

In the case of, *Bilal Ahmed Kaloo v. State of AP*²⁰, the Court interpreted Section 153A and Section 505(2) of IPC. It was observed that promotion of ill-will, enmity or hatred between different religious communities or groups and doing acts which prejudice maintenance of peace and harmony in the State is a common feature of both these sections which makes such acts an offence under the said sections²¹. In order to attract these provisions, the condition precedent is that at least two such communities or groups must be involved.

ANALYSIS OF RESTRICTIONS ON FREEDOM OF SPEECH AND EXPRESSION

Among the restrictions on freedom of speech and expression mentioned under Article 19(2) of the Constitution, the ones which are most relevant for restricting Hate Speech are “public order” and to some extent, “sovereignty and integrity”. In *Ramji Lal Modi* case, the Supreme Court held that the wordings of Article 19(2) read : “in the interests of public order”, after the First Amendment Act, 1951. This gives a very wide interpretation to the said clause and hence a Section like 295A which don’t directly affect public order but can be considered to do so “in the interests of public order”.

¹⁷ AIR 1988 SC 775

¹⁸ AIR 2015 SC 1523

¹⁹ (2010) 7 SCC 398

²⁰ AIR 1997 SC 3483

²¹ Law Commission of India, “Hate Speech” (March, 2017)



However, the ‘decency and morality’ clause of Article 19(2) could also be taken into account if acts such as insulting or hurting religious feelings constitute hate speech. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 punishes the acts of “intentional insult and intimidation with an intention to humiliate any member belonging to SC or ST at a public place, taking into account the ground of decency and morality. Addressing a member of a Scheduled Caste as ‘chamaar’ would come within the scope of hate speech irrespective of the fact whether or not it leads to disturbance of public order²².

CAUSES BEHIND THE PREVALENCE OF HATE CRIMES

PREJUDICE OR BIAS

The main reason or motive behind a person committing a hate crime is the feeling of prejudice or bias against a particular community or individual. Such bias or prejudice is built by the age old mentalities and thinking about that particular community which pass on from generation to generation without even knowing the rationale behind such notions. Prejudice or hatred that motivates the perpetrator for doing such crimes need not necessarily be of a single type. There can be a combination of different prejudices which abates such crimes.

IMPACT OF SOCIAL ENVIRONMENT

Social environments play an active role in the commission of hate crimes. Where the society is structured in such a way that benefits are given to certain characteristics of a particular identity only while conveniently ignoring the others, in such circumstances the

likelihood of the occurrence of hate crimes is more. For example: when benefits are given to people belonging to white race or to males or to heterosexual people only, without even citing a proper and valid reason, then hate crimes are more likely to occur.

Also, including such discriminatory practices in the policies and laws, may result in an environment where the perpetrators feel a sense of immunity while targeting the members of the minority community.

PERCEPTION

Sometimes the hate crimes may be committed due to the perception formed by the perpetrator that certain groups or communities could pose a threat to them. They could be driven by the fact that such groups could cause them harm and so to escape from such scenario, they tend to commit hate crimes.

Such threats may be divided into:

- Realistic Threats – This includes competition in jobs, availability of resources, housing and bodily harm.
- Symbolic Threats – This includes threat to the values and social norms of people.

OTHER FACTORS

There are various other factors which motivate the perpetrators to indulge in hate crimes. For example: There are 4 types of perpetrators:

- Defensive – these are influenced or motivated by their desire to protect and defend their territory.

²² Law Commission of India, “Hate Speech” (March, 2017)



- Thrill seekers – these are the people who are motivated by thrill and excitement and in influence of the same commit hate crimes.
- Mission – they are driven by a mission to eliminate “difference” in the society.
- Retaliators²³ - they are motivated by a feeling of retaliation for any attack against themselves or their community.

IMPLICATIONS/ AFTER EFFECTS OF HATE CRIMES

- Hate Crimes affect the victims psychologically and especially those hate crimes which are motivated by bias against a particular community. They suffer from psychological distress and experience extreme post – traumatic stress, depression, anger, anxiety, safety issues and mental illness. Hate crimes based on bias are mostly violent in nature and lead to the above mentioned sufferings of the victims.
- Such crimes deliver a bad message to the society that the victims are unsafe in the society and they are not welcomed there. They feel a sense of unwanted for themselves and their communities thereby leading to a feeling of lack of safety and security. This lowers their self-esteem and they suffer from inferiority complex.
- It promotes disrespect and disobedience of the laws. Since there is no law or statute that motivates the commission of hate crimes rather there are several legislations which provides for the punishment of such crimes²⁴. So when such kind of crimes happen it shows that there is no respect for law among the

people and they choose to do whatever they wish to, irrespective of what is written in the laws of the country.

NEED FOR LAWS DEALING WITH HATE CRIMES

To deal with hate crimes effectively, they must be treated as a unique kind of crimes as distinguished from other forms of crime. There can be various ways or practices which might result in aggravating hate crimes such as the police officials not believing the victims or failure to properly investigate such crimes on the part of the police, misrepresentation of the charges and offence and failure of the courts to properly serve adequate punishments to the culprits.

In absence of laws dealing specifically with hate crimes, when a crime is committed against a member of an already stigmatized community or group i.e. a group which is frequently involved in criminal activities, then in such cases the investigation becomes prejudiced at the beginning itself by considering the victim to be faulty already. The victim just by the reason of belonging to a stigmatized community suffers such biasness on the part of the investigating authorities when such crimes happen.

Thus the legalization of hate crimes is a must since it will help in influencing networks dealing with such crimes. Then the authorities will have to work according to the rules and procedures prescribed under the law and will not be able to follow arbitrary practices. This will also reduce the insecurities faced by the victims of hate crimes since they will be assured that justice will be served on them through the laws and

²³ Hate Crime, *available at:* drishtiiias.com (last visited on September 30, 2022)

²⁴ Hate Crime, *available at:* drishtiiias.com (last visited on September 30, 2022)



that they will not be judged by anybody. It will develop a feeling of trust among the victims for the officials dealing with such crimes. Also legalizing hate crimes will build confidence of the people in the criminal justice system. The perpetrators will also have fear in their minds before resorting to such crimes²⁵.

Legalizing hate crimes will mend societal rifts as well. People would respect other communities to some extent and if laws are properly implemented with serious punishments served upon the wrong doers, the crime rate would also fall down to some extent. This will lead to peace and harmony among the various communities in the society thereby serving the very purpose of the creation of such laws.

ROLE OF SOCIAL MEDIA

Social Media provides a platform to the miscreants to easily spread false, derogatory and offensive ideas anonymously, this is an observation made by the 267th Law Commission Report. The report stated that such ideas need not necessarily provoke violence but they might influence the discriminatory beliefs or attitudes present in the society which contributes towards the concept of “hate speech”.

Advocate and digital organisation, Internet Freedom Foundation founder, Apar Gupta said that users who spend a greater amount of time on social media, could gather personal data to create contextual advertisements on social media or could even lead to a situation selling personal data to third parties. He said that this practice often leads to the

preference of biased and provocative speech over other complex information which require greater understanding, depth, patience and thought. This practice has ultimately resulted in increased provocative, polarized and hate speech.

According to him, private social platforms in India were not keen or diligent enough to take down such provocative and polarized content from social media. Often these social media platforms lack the expert local language classifiers for moderating the content on these platforms. In his opinion, people while participating on social media platforms must acknowledge that such acts can also have real life consequences.

They must acknowledge the fact that their country has an ample amount of incredible diversity which give us strength and is not a division in itself.

In 2021, a former Facebook employee revealed that Facebook moderated only selected content and action was taken against only 3-5% instances of hate speech²⁶.

Hence, the expression of views and speech on social media platforms in a large scale call for an investigation into the existing tools that determines the criteria to decide whether a speech is hate speech or not.

WAYS TO REPORT HATE CRIMES IN INDIA

FILE AN ONLINE COMPLAINT - The first way to report hate crimes is to file a complaint with the National Human Rights Commission of India. The procedure for filing a complaint is that first you have to go

²⁵ Hate Crime, *available at*: legalserviceindia.com (last visited on October 1, 2022)

²⁶ Hate speech and rise in promoting enmity between groups cases: Do we need a new, specific law?,

available at: barandbench.com (last visited on October 2, 2022)



to the official website of NHRC and fill out all the required details. Following which your complaint will be registered.

TOLL FREE HELPLINE NUMBER - A toll free number has been established for reporting incidents of hate crimes and mob violence. A group of citizens standing for social justice and harmony, known as United Against Hate, has created a toll free number known as Helpline Against Hate, 1800-3133-600-00. The object behind this is to document such incidents as well as to offer legal recourse to the victims.

This number could be used in approximately 100 places by the victims. The services are provided in both English and Hindi languages. The victims will be assisted by the volunteers of the United Against Hate group and police officials in tasks such as registration of FIR and other legal matters.

The helpline could be used even before the crime occurs and the concerned authorities will take adequate measures to prevent the crime.

INFORMING THE POLICE – As soon as the crime occurs the concerned persons could call the police and inform them each and everything about the incident.

TAKE NOTE OF THE INCIDENT – As soon as the crime takes place, one could note down the incident including even the minute details. Every little detail of the perpetrator should be noted down including the height, age, gender, clothing etc. Any other distinguishing remark or threat must also be included.

RECORD THE INCIDENT²⁷ – One could record any such attack or incident that happened in any public place. Recording in a public place is legal while recording anything that happened in a private place or property might be illegal sometimes, depending upon the laws of that particular state or area. Also recording could pose risk to the person who is recording, so beware if you are doing so.

There is a huge gap between the occurrence of hate crimes and the reporting of such crimes. These crimes must be reported so that a clear message is served upon the society that such crimes will not be tolerated and the law enforcement authorities are vigilant enough to take charge of such crimes. Also reporting of these crimes will help to measure the seriousness of such incidents so that proper resources could be allocated for the prevention of such crimes.

SUGGESTIONS TO IMPROVE THE CURRENT SCENARIO

The law outlining the punishment for hate crimes must expressly list the characteristics in relation to which such a crime may be committed because penal statutes are subject to rigorous interpretation. Hate crimes are intended to send a message to the victim and to everyone in the victim's community who has similar qualities that they are not legitimate members of society and may in the future become targets for what they stand for. Additionally, the victim could have long-term psychological and emotional suffering along with a diminished feeling of self-worth, which is contrary to the concept of "equality."

²⁷ How to report hate crimes in India, *available at*: <https://blog.ipleaders.in> (last visited on October 3, 2022)



The criminal justice system will become more robust and equitable by distinguishing hate crimes from other types of crimes and developing comprehensive legal initiatives involving all relevant parties in order to ensure proper evidence collection, prevent secondary victimisation, conduct trials properly, and value evidence.

The drafting of a penal code that recognises bias-motivated offences and provides for their punishment calls for careful consideration of numerous elements. To create a law that is informed by international norms but grounded in local reality, comparative law and practise are essential. It is suggested that the categories of crimes should not only include lynchings and hate speech, but also any other criminal offences that are perpetrated against the victim's person or property and are in any other way motivated by prejudice against protected qualities.

Furthermore, both individual and group offences must be recognised by the law. For the conviction to stand even if the crime was partially motivated by bias, there should also be allowance for mixed reasons as constitutive aspects of the offence. Finally, in keeping with UK custom, hate crimes perpetrated online will be regarded just as seriously as those committed in person.

To add on, education on diversity can have a greater influence than legislation. Proactive education and rehabilitative education are two different approaches to teaching diversity. Education that is proactive will aid to make future offenders and non-offenders aware of the diverse populations' values, beliefs, and customs with the hopes that this

exposure will reduce the likelihood of potential offenders committing hate crimes. The aim of rehabilitation education prohibiting former offenders from committing new crimes. In a society where victims of lynching are due to the proliferation of false information and fake news, this education will bring both sides closer together through becoming aware of one another's values and ideas.

This paper looks at a few of the strategies for reducing hate crimes. These crimes differ from similar crimes in a way that necessitates their own legislation to address them. While a person's death may result from a personal matter, lynching is always a public event, social and non-judicial. Additionally, it has a greater influence and endangers internal communal cohesion in a state or even on a global scale. Despite the fact that legislative actions are the only way to eradicate the ingrained systemic casteism and misogyny²⁸. By educating the populace, we could make the offender aware of the victim's religion, which might result in a certain amount of tolerance in the mind of offenders for the victim's ideals and beliefs.

CONCLUSION

Hate crimes are not a recent trend nor a local issue. Innocent people are victimised all across the world simply for upholding particular ideas or identities. People's power over their identities, such as being a Muslim, a woman, or a person, is minimal to non-existent. They are born into this race. Throughout the years, there had been numerous measures to combat hate crimes

²⁸ S. Hasthisha Desikan, "Legal Regulation of Hate Crimes in India: A look at the current regime and its

Shortcomings" *4 International Journal of Law Management & Humanities* 1242 (2021)



worldwide but all these efforts to control hate crimes have not been successful enough.

Tolerance and harmony between the various sects of people are essential for national integrity and all-around growth in a country like India where there are numerous religions and even more castes. The recent increase in hate crimes in the past few years is troubling, and the fact that the Indian legal system is incapable of effectively resolving this situation is even more alarming.

As a theoretical crime category, hate crimes are simple to understand, but they are challenging to implement in a conventional criminal justice system. Although some are committed, most alleged hate crimes are not murders driven by ideologies. Like most crimes, the majority are low-level offences committed by young males without ideologies who could be characterised as alienated, antisocial, impulsive, and frequently prejudiced. It's difficult to say whether labelling them as bigots in addition to criminals helps others comprehend their behaviour and our culture.

Although the system typically views the prevalence of such crimes as a law and order issue, it is more generally a social justice issue. There is a lot of evidence to support the idea that higher castes utilise and justify various sorts of violence as weapons to guarantee that lower castes follow caste-based customs and norms. Attacks frequently take the form of collective punishment, in which whole societies are held accountable for the alleged wrongdoings of individuals who want to change social norms or demand their rights.

Hate crimes, or acts motivated by the victims' membership in a particular group, have only recently attracted legal attention and

academic research. There are still numerous unanswered concerns regarding the character and scope of these offences, the identities of victims and the results of victimisation, and the factors that contribute to criminal behaviour. Additionally, little study has been done on practical ways to deal with hate crime offenders or on effective strategies for preventing and countering hate crime. Before we fully comprehend hate crime, a lot more research is necessary.

Even while India's National Crime Records Bureau (NCRB), a federal agency that keeps track of crimes all over the nation, compiles data on a variety of crimes, hate crimes are not included, partly due to the lack of particular laws to address such crimes. In contrast, the government is compelled to publish regular reports on hate crimes in democracies with varied populations, such as the United States and the United Kingdom.

The urgent need is to see the problem of hate crime through the prism of culture rather than as a development issue and to acknowledge that it is equally embedded in the practicalities of daily living. Therefore, eliminating these legal loopholes requires moving beyond law and incorporating opposition tactics and the pursuit of unbiased agency into everyday life, media, and popular culture. Our diverse culture is not at all suited to the bigotry and prejudice that motivate such atrocities. Given all of these elements, it is necessary to enact distinct legislation and stringent implementation guidelines to prevent such biased-hate crimes.



BIBLIOGRAPHY

ONLINE SOURCES

1. Hate Crime, available at <https://drishtiias.com>
2. What is Hate Speech and its laws in India, available at <https://writinglaw.com>
3. Hate Crimes in India: An Analysis, available at <https://juscopus.com>
4. ProBono India, Is there a need for a special law on Hate Crimes
5. Hate Speech and rise in promoting enmity between groups cases: Do we need a new, specific law, available at <https://barandbench.com>
6. 89 Instances of Hate Speech across six North Indian States in four months, available at <https://thewire.in>
7. Hate Crime, available at <https://legalserviceindia.com>
8. How to report hate crimes in India, available at <https://blog.ipleaders.in>
9. S. Hasthisha Desikan, “Legal Regulation of Hate Crimes in India: A look at the current regime and its shortcomings” 4 *International Journal of Law Management & Humanities*

7. AIR 1950 SC 129
8. AIR 1957 SC 620
9. AIR 1988 SC 775
10. AIR 2015 SC 1523
11. (2010) 7 SCC 398
12. AIR 1997 SC 3483

ACTS / STATUTES

1. Indian Penal Code, 1860
2. Representation of People’s Act, 1951
3. Information Technology Act, 2001
4. Code of Criminal Procedure, 1973
5. Unlawful Activities (Prevention) Act, 1967
6. Protection of Civil Rights Act, 1955
7. Religious Institutions (Prevention of Misuse) Act, 1980
8. The Cinematographers Act, 1952
9. The Constitution of India, 1950

REPORTS

1. Law Commission of India, “Hate Speech” (March 2017)

CASE LAWS

1. AIR 2014 SC 1591
2. WP (C). No. 23341 of 2020
3. First Bail Application No. 161 of 2022
4. Bail Application No. 3240 of 2021
5. Writ Petition (Criminal) No. 279 of 2022
6. Writ Petition (Criminal) No. 160 of 2020